

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SYDNEY SALPRIETO, AN INFANT BY HER MOTHER
AND NG CHRISTY SALPRIETO,

Claimant,

NOTICE OF MOTION

-against-

CHAPTER 11

FAMILY GOLF CENTERS, INC.

CASE #00-41065 THROUGH
#00-41196 (SMB)

Debtors.

HON. STUART M. BERNSTEIN

-----X

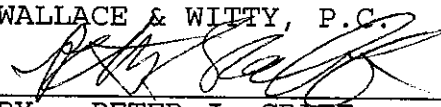
PLEASE TAKE NOTICE, that upon the annexed Affirmation of PETER J. GRAFF, ESQ., dated the 29TH Day of AUGUST, 2000, and the exhibits annexed thereto, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004, on the **5TH day of OCTOBER, 2000, at 10:00 A.M. O'Clock in the forenoon of that day, Room 723**, or as soon thereafter as counsel may be heard, for an Order Vacating the Stay of Arbitration Afforded by 11 USC Section 362 and permitting an action against the Debtor to proceed in the Supreme Court of the State of New York, County of Suffolk, Riverhead, New York.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, must be in writing, must state with particularity the grounds for objections, and must be served upon the undersigned and filed with the Clerk of the Bankruptcy Court no later than Three (3) days prior to the return date of this motion.

Dated: Brentwood, New York
September 1, 2000

Yours, etc.,

WALLACE & WITTY, P.C.


BY: PETER J. GRAFF
Attorneys for Plaintiff
Office & P.O. Address
600 Suffolk Avenue
Brentwood, New York 11717
(631)435-0073 File 11950

TO:
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, ESQS.
ONE NEW YORK PLAZA
NEW YORK, NEW YORK 10004-1980
BANKRUPTCY ATTORNEYS FOR FAMILY GOLF CENTER, INC.

BERLACK, ISRAELS, LIEBERMAN, LLP
120 West 45th Street
New York, New York 10036
Att Edward S. Weisfelner, Esq.
Attorneys for Official Committee of Unsecured Creditors

Morgan, Lewis & Bockius
101 Park Avenue, 40th Floor
New York, New York 10178
Att: Richard S. Todder, Esq.

Brian Schoichi Masumoto, ESQ.
UNITED STATES TRUSTEE
33 WHITEHALL STREET 21ST FLOOR
NEW YORK, NEW YORK 10004

SCOTT M. DORESON, ESQ.
LAW OFFICES OF PATRICK L. MacDONNELL
1325 FRANKLIN AVENUE SUITE 230
GARDEN CITY, NEW YORK 11530
ATT FOR DEFENDANT FAMILY GOLF CENTERS, INC.

WILSON, MOSKOWKITZ, EDELMAN & DICKER, LLP
925 Westchester Avenue
White Plains, New York 10604-3527
Att for EQR-DEER RUN VISTAS, INC.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SYDNEY SALPRIETO, AN INFANT BY HER MOTHER
AND NG CHRISTY SALPRIETO,

Claimant,

AFFIRMATION IN SUPPORT

-against-

CHAPTER 11

FAMILY GOLF CENTERS, INC.

CASE #00-41065 THROUGH
#00-41196 (SMB)

Debtors.

HON. STUART M. BERNSTEIN

-----X
STATE OF NEW YORK)

SS:

COUNTY OF SUFFOLK)

PETER J. GRAFF, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. I am associated with the firm of WALLACE & WITTY, P.C., attorneys for the plaintiff herein, and as such, I am fully familiar with the facts of circumstances heretofore had herein.

2. This Affirmation is submitted in support of the within Motion which seeks an Order To Lift the Stay Afforded by 11 USC Section 362, and permitting an action against Debtor to proceed in the Supreme Court, Suffolk County.

3. On or about June 26, 2000, Claimants interposed a motion for an Order lifting or modifying the automatic stay to the extent necessary to allow them to continue to prosecute an action previously commenced against the Debtor in the Courts of the State of New York. That motion was returnable before this Court on July 25, 2000 at 10:00 A.M.

4. At the request of the attorneys for the Debtor, the hearing on the motion was adjourned from July 25, 2000 to August 8, 2000, upon written Stipulation annexed hereto as Exhibit "1."

5. Due to a clerical error in your affirmant's office, the new date was not properly entered in our litigation calendar for the new date. Consequently, no attorney from this office appeared on August 8, 2000.

6. We apologize for any inconvenience to the court or counsel which resulted from said non-appearance.

7. Notwithstanding the foregoing, however, it is respectfully submitted that Claimant's motion should be granted.

8. It is noted that the relief proposed herein will result in no prejudice to the Debtors, who have been aware of Claimants' motion since June of this year and have previously submitted opposition thereto. It is also respectfully noted that the original hearing date of July 25, 2000 was properly noted in our calendar and that the aforementioned error occurred only after claimant granted the Debtor's attorneys an adjournment upon their request.

9. The facts of this matter are as follows: On or about January 5, 2000, SYDNEY SALPIETRO, the infant-plaintiff herein, commenced a suit against the defendant-debtor FAMILY GOLF CENTERS, INC., in the Supreme Court of the State of New York, County of Suffolk, under Index # 00-01132 to recover money damages in the amount of \$1,000,00.00 in the First Cause of action on behalf of the Infant-Plaintiff SYDNEY SALPIETRO and in the amount of \$500,000.00 in the Second Cause of Action on behalf of CHRISTY SALPIETRO, the mother of the infant-plaintiff, for medical care and attention for her daughter, and for being deprived of the earnings, society, services, aid and companionship of her daughter. A copy of the Summons and Complaint is annexed as Exhibit "2."

10. This action arose out of the injuries allegedly sustained by infant-plaintiff on May 26, 1998, as a result of the alleged negligence of the defendant.

11. The infant-claimant on the day in question, was with her mother at a birthday party, when they went to the arcade owned by FAMILY GOLF CENTERS, INC., where there are children rides. The infant-plaintiff and other children wanted to go on the Tilt-A-Whirl Ride and the male attendant advised her mother that she would have to accompany the children. SYDNEY SALPIETRO at the time of the happening of this incident was 3 years of age, having been born on March 7, 1995.

12. Ms. Salpietro was going to accompany the children on the ride, however, the attendant let the children go onto the ride platform by themselves, before she could get over to them.

13. By the time she gained access, the infant-plaintiff had fallen on the platform and sustained a severe cut over her left eye requiring her to be transported to the hospital where she had 12 sutures to repair the wound.

14. The liability in this matter is predicated on improper supervision on the part of the ride attendant, who should not have let the small children into the ride before the mother could accompany them. The children were let onto the ride platform without adult supervision.

15. On or about June 12, 2000, the Debtor interposed its answer to the complaint of the movant. A copy of the answer is annexed as Exhibit "3."

16. On or about June 19, 2000, your affirmant was informed that defendant filed for Bankruptcy on or about May 4, 2000, in the U.S. Bankruptcy Court, Southern District of New York.

17. By the provisions of 11 USC Section 362, all persons are enjoined and stayed from commencing or continuing any suit against the debtor.

18. The actions of movant against the Debtor was filed prior to the Bankruptcy proceeding, and is now pending in the Supreme Court of the State of New York, County of Suffolk, Riverhead, New York.

19. FAMILY GOLF CENTERS, INC., has liability coverage affording coverage for the alleged injuries with the CRUM & FORSTER INSURANCE COMPANY, under Claim # NMU 80068394.

20. Upon information and belief, said policy provided that the insolvency or bankruptcy of the debtor, or the insolvency of its estate, shall not release the insurance company from the payment of damages for injuries sustained during the term of and within the coverage of said policy.

21. In the event movant is permitted to pursue the aforementioned suit in the Supreme Court of the State of New York, County of Suffolk, it will not file a claim in this proceeding, except to the extent of the amount of any deductible. There will be no claim made except for the deductible on the policy of insurance, which must be satisfied as a condition precedent to the insurance coverage.

22. The attorney for the Debtor in the Supreme Court, Suffolk County action, is the law firm PATRICK L. MacDONNELL, ESQ., who is defending that action, at no expense to the Debtor or its estate.

23. The continuation of said suit in the Supreme Court of the State of New York, County of Suffolk, will in no way hinder, burden or delay the resolution of this case.

WHEREFORE, it is respectfully requested that the Stay afforded by 11 USC Section 362 be modified to the extent of the debtor's applicable insurance policies, and be lifted so as to permit the aforementioned suit to continue against the Debtor now pending in the First District Court, Suffolk County, State of New York.

DATED: BRENTWOOD, NEW YORK

August 29, 2000

A handwritten signature in black ink, appearing to read 'Peter J. Graff', written over a horizontal line.

PETER J. GRAFF

Gerald C. Bender (GB-5849)
Lawrence A. First (LF-9650)
FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON
(A Partnership Including
Professional Corporations)
Attorneys for the Debtors
and Debtors-in-Possession
One New York Plaza
New York, New York 10004
(212) 859-8000

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

In re:	:	Chapter 11
	:	Case Nos. 00 B 41065 (SMB)
RANDALL'S ISLAND FAMILY GOLF	:	through 00 B 41196 (SMB)
CENTERS, INC., et al.,	:	
	:	(Jointly Administered)
Debtors.	:	

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STIPULATION AND ORDER

WHEREAS, Sydney Salprieto and NG Christy Salprieto (the "Movants") filed a Notice of Motion seeking relief from the automatic stay (the "Motion") with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on June 26, 2000;

WHEREAS, the date and time for the hearing on the Motion is scheduled for July 25, 2000 at 10:00 a.m.;

WHEREAS, At the request of the Debtors, the Debtors and the Movants have agreed to reschedule the hearing and extend the Debtors' time within which to respond to the Motion;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the Debtors and the Movants, as follows:-

1. The hearing with respect to the Motion is rescheduled from July 25, 2000 at 10:00 a.m. to August 8, 2000 at 10:00 a.m.

2. The time for the Debtors to file and serve their response to the Motion is extended to August 3, 2000; provided, however, that the Debtors shall serve their response to the Motion on Movants' counsel by overnight mail.

3. The Movants consent to the entry of, and this Stipulation and Order shall constitute, an order, as contemplated by section 362(e) of title of the United States Code, continuing

the automatic stay pending the conclusion of a hearing on the Motion.

Dated: New York, New York
July 20, 2000

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON
(A Partnership Including
Professional Corporations)
Counsel for Debtors and
Debtors-in-Possession
One New York Plaza
New York, New York 10004
(212) 859-8000

By: Gerald C. Bender (GB-5849)

WOLLACE AND WITTY, P.C.
Attorneys for Sidney Salpriedo and
NG Christy Salpriedo
600 Suffolk Avenue
Brentwood, New York 11717
(631) 435-0073

By: Peter J. Graff (PG-4336)

SO ORDERED:

New York, New York
July __, 2000

UNITED STATES BANKRUPTCY JUDGE

339760

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

Index No. ~~99~~ **CO-01132**

SYDNEY SALPIETRO, an infant by her mother
and natural guardian, CHRISTY SALPIETRO
AND CHRISTY SALPIETRO, individually

Plaintiff
designates the
County of Suffolk
as the place of
trial

Plaintiff(s)

-against-

FILED

JAN 5 2000

Plaintiff's
residence
is the basis of
the venue

FAMILY GOLF CENTERS INC.

EDWARD P. ROMAINE
COUNTY CLERK

SUMMONS

Defendant(s)

Plaintiff's residence:
33 Stratton Lane
Stony Brook, N.Y.

COUNTY OF SUFFOLK

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: October 8, 1999

Defendant's address:

Family Golf Centers Inc.
c/o Secretary of State

WALLACE & WITTY, P.C.
Attorneys for the Plaintiff

BY: 

PETER J. GRAFF

600 Suffolk Avenue
Suite A
Brentwood, New York 11717
(631) 435-0073
Our File #: 11950

1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

SYDNEY SALPIETRO, an infant by her mother
and natural guardian, CHRISTY SALPIETRO
AND CHRISTY SALPIETRO, individually

Plaintiff(s)

FILED

**VERIFIED
COMPLAINT**

-against-

JAN 3 2009

FAMILY GOLF CENTERS INC.

EDWARD P. ROMAINE
COUNTY CLERK

Defendant(s)

Plaintiff, SYDNEY SALPIETRO AND CHRISTY SALPIETRO, by their
attorneys, Wallace & Witty, P.C., complaining of the defendant, FAMILY
GOLF CENTERS INC., upon information and belief, alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF THE
INFANT PLAINTIFF, SYDNEY SALPIETRO

FIRST: That at all times hereinafter mentioned, the plaintiffs, SYDNEY
SALPIETRO AND CHRISTY SALPIETRO, were residents of the County of
Suffolk, State of New York.

SECOND: That at all times hereinafter mentioned, the defendant, FAMILY
GOLF CENTERS INC., was and still is a domestic corporation, duly
organized and existing under and by virtue of the laws of the State of New
York and doing business in the State of New York.

THIRD: That at all times hereinafter mentioned, the defendant, FAMILY
GOLF CENTERS INC., was and still is a foreign corporation duly organized
and existing under and by virtue of the laws of the states of the United States
other than the State of New York, and doing business in the State of New
York.

FOURTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., was and still is a foreign corporation duly organized and existing under and by virtue of the laws of the states of the United States other than the State of New York, not authorized to do business in the State of New York, and doing business in the State of New York.

FIFTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., was the owner of a premises known as Sports Plus located at 110 New Moriches Road, Lake Grove, New York.

SIXTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., was the lessee of a premises known as Sports Plus located at 110 New Moriches Road, Lake Grove, New York.

SEVENTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., was the lessor of a premises known as Sports Plus located at 110 New Moriches Road, Lake Grove, New York.

EIGHTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., its agents, servants and/or employees maintained the aforesaid premises.

NINTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., its agents, servants and/or employees managed the aforesaid premises.

TENTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., its agents, servants and/or employees controlled the aforesaid premises.

ELEVENTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., was the owner of a "tilt a whirl" amusement

ride located inside the aforesaid premises.

TWELFTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., was the lessee of a "tilt a whirl" amusement ride located inside the aforesaid premises.

THIRTEENTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., was the lessor of a "tilt a whirl" amusement ride located at the aforesaid premises.

FOURTEENTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., its agents, servants and/or employees maintained the aforesaid "tilt a whirl" amusement ride.

FIFTEENTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., its agents, servants and/or employees managed the aforesaid "tilt a whirl" amusement ride.

SIXTEENTH: That at all times hereinafter mentioned, the defendant, FAMILY GOLF CENTERS INC., its agents, servants and/or employees controlled the aforesaid "tilt a whirl" amusement ride.

SEVENTEENTH: That on or before the 26TH day of May, 1998, while the infant plaintiff, SYDNEY SALPIETRO, was attempting to board the "tilt a whirl" amusement ride at the aforesaid premises, she fell causing her to sustain severe and permanent injuries, due to the negligence, carelessness and recklessness on the part of the defendants, their agents, servants and/or employees.

EIGHTEENTH: That the defendants, their agents, servants and/or employees were negligent, careless and reckless in that the aforesaid premises was in a dangerous, hazardous condition; the defendants, their

agents, servants and/or employees acted in careless disregard of the safety of the infant plaintiff, in failing to give any notice or warning of the existence of said unsafe condition; in creating and maintaining a trap; in permitting and allowing the infant plaintiff to enter the "tilt a whirl" amusement ride without accompanying an adult; in failing to hold back the infant plaintiff until an adult was ready to accompany her to board the "tilt a whirl"; in failing to assist the infant plaintiff to a seat aboard the aforesaid ride; in permitting and allowing the infant plaintiff to enter and board the ride by herself, without any adult supervision; in failing to properly supervise the aforesaid "tilt a whirl" ride; in failing to provide a sufficient number of employees to supervise the "tilt a whirl" ride; in failing and/or omitting to warn the plaintiff, in permitting a dangerous condition of which the defendants, their agents, servants and/or employees knew or in the exercise of reasonable care and caution should have known, to remain; in failing to remedy said condition and in general being reckless, negligent and careless.

NINETEENTH: That the defendants, their servants, agents and/or employees had actual knowledge and notice of the dangerous condition mentioned, or the same had existed for a sufficient length of time prior to the happening of the accident alleged so that the defendants should have and could have had such knowledge and notice.

TWENTIETH: That as a result of this occurrence, the infant plaintiff, SYDNEY SALPIETRO, was caused to sustain injury to her person and body, requiring medical care and treatment, causing her great pain and disability, and incapacity from her normal and usual duties and she was otherwise permanently and partially disabled.

TWENTY-FIRST: That this action falls within one or more of the exceptions set forth in CPLR 1602 and does not limit the liability of the defendants joint or several responsibilities.

TWENTY-SECOND: That by reason of the foregoing, the infant plaintiff, SYDNEY SALPIETRO, was damaged in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF
OF THE PLAINTIFF, CHRISTY SALPIETRO

TWENTY-THIRD: That the plaintiff, repeats, reiterates and realleges each and every paragraph of the First Cause of Action with the same force and effect as though more fully set forth at length herein.

TWENTY-FOURTH: That the plaintiff, CHRISTY SALPIETRO, as the mother of SYDNEY SALPIETRO, as a result of the foregoing occurrence was compelled to expend various sums of money for medical attention and care in order to cure her daughter of the injuries aforementioned which are permanent and partial and will be deprived of the earnings, society, services, aid and companionship of her daughter.

TWENTY-FIFTH: That by reason of the foregoing, the plaintiff, CHRISTY SALPIETRO, was damaged in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS.

WHEREFORE, the plaintiffs demand judgment against the defendant in the First Cause of Action in the amount of ONE MILLION (\$1,000,000.00) DOLLARS and demands judgment against the defendant in the Second Cause of Action in the amount of FIVE HUNDRED THOUSAND

(\$500,000.00) DOLLARS, together with the costs and disbursements of
this action.

Dated: Brentwood, New York
October 8, 1999

WALLACE & WITTY, P.C.
Attorneys for the plaintiff

BY: 

PETER J. GRAFF

600 Suffolk Avenue
Suite A
Brentwood, New York 11717
(631) 435-0073
File #: 11950

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

—x Index #:

SYDNEY SALPIETRO, an infant by her mother
and natural guardian, CHRISTY SALPIETRO
AND CHRISTY SALPIETRO, individually

Plaintiff(s)

-against-

NOTICE DECLINING
SERVICE BY
ELECTRONIC MEANS

FAMILY GOLF CENTERS INC.

Defendant(s)

—x

COUNSEL:

PLEASE TAKE NOTICE that, pursuant to CPLR 2103(b)(5), this firm declines service of Pleadings, Motions, Demands, Affirmations, Memoranda, Briefs or other legal papers of any type whatsoever, by facsimile, telecopier or other electronic means.

PLEASE TAKE FURTHER NOTICE that any such purported service shall be deemed a nullity, and this firm reserves its rights to seek appropriate relief from the Court in the event of a failure to make proper service of such papers.

Dated: Brentwood, New York
October 8, 1999

Yours, etc,

WALLACE & WITTY, P.C.
Attorneys for the plaintiff

BY: 

PETER J. GRAFF

600 Suffolk Avenue
Suite A
Brentwood, New York 11717
(631) 435-0073
File #: 11950

STATE OF NEW YORK)
COUNTY OF SUFFOLK) SS.:

Christy Salpietro, being duly sworn, deposes and says:

That deponent is the Plaintiff, in the within action; that deponent has read the foregoing Complaint and knows the contents thereof, that the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters, deponent believes is to be true.

Christy Salpietro
CHRISTY SALPIETRO,
mother and natural guardian of
~~CHRISTY~~ SALPIETRO
Sydney

Sworn to before me on this
21 day of October 1999

NOTARY PUBLIC

BARBARA L. GENTILE
Notary Public, State of New York
No. 4682376
Qualified in Nassau County
Commission Expires May 8, 2022

-----X
SYDNEY SALPIETRO, an infant by her
mother and natural guardian,
CHRISTY SALPIETRO, and CHRISTY SALPIETRO,
individually,

Plaintiff(s),

= against =

FAMILY GOLF CENTERS, INC.,

Defendant.

VERIFIED ANSWER

JUN 12 2000

-----X
Defendant(s), FAMILY GOLF CENTERS INC., by the undersigned
attorneys, LAW OFFICES OF PATRICK L. MacDONNELL, as and for an
answer to plaintiff(s)' Complaint, allege(s) herein, upon
information and belief, as follows:

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION ON BEHALF
OF THE INFANT PLAINTIFF, SYDNEY SALPIETRO**

1. Deny(ies) knowledge or information sufficient to form a
belief as to the allegations contained in paragraphs(s) numbered
FIRST, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH,
ELEVENTH, TWELFTH, THIRTEENTH, FOURTEENTH, FIFTEENTH, SIXTEENTH,
TWENTIETH, TWENTY-FIRST and TWENTY-SECOND of the complaint.

2. Deny(ies) each and every allegation contained in
paragraph(s) numbered SEVENTEENTH, EIGHTEENTH, and NINETEENTH of
the complaint.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION ON BEHALF OF
OF THE PLAINTIFF, CHRISTY SALPIETRO**

3. Answering paragraph(s) numbered TWENTY-THIRD of the
complaint, defendant(s) repeat(s) and reiterate(s) each and every
admission and denial heretofore made to paragraphs(s) set forth
therein with the same force and effect as if more fully set forth

4. Deny(ies) knowledge or information sufficient to form belief as to the allegations contained in paragraph(s) number TWENTY-FOURTH and TWENTY-FIFTH of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

5. The injuries and/or damages allegedly sustained by plaintiff(s) were caused in whole or in part by the culpable conduct of plaintiff(s) including negligence and assumption of risk, as a result of which the claim(s) of the plaintiff(s) is/are therefore barred or diminished in the proportion that such culpable conduct of the plaintiff(s) bear(s) to the total culpable conduct causing the alleged injuries and/or damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

6. The complaint fails to state a cause of action upon which relief can be granted as to answering defendant(s).

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

7. In the event that plaintiff(s) recover(s) damages for personal injury (or injury to property or wrongful death) where the plaintiff(s) seek(s) to recover economic loss, such economic loss will be reduced by the Collateral Source Rule of CPLR 4545(c).

WHEREFORE, defendant(s) demand(s) judgment against the plaintiff(s) dismissing the Complaint herein, together with the costs and disbursement of this action.

Garden City, New York
June 6, 2000

Yours etc.,

THE LAW OFFICES OF
PATRICK L. MACDONNELL

By: Mark A. Bonilla

MARK A. BONILLA

Attorneys for Defendant
1325 Franklin Avenue
Garden City, New York 11530
(516) 742-3020

TO: Wallace & Witty, P.C.
Attorneys for Plaintiff
600 Suffolk Avenue Suite A
Brentwood, New York 11717
(631) 435-0073
File #11950

AFFIDAVIT OF SERVICE

STATE OF NEW YORK }

ss:

COUNTY OF SUFFOLK }

LYNN STERN, being duly sworn, deposes and says:

Your deponent is not a party to the within action, is over 18 years of age and resides at Centereach, New York

On June 26, 2000, your deponent served the following :

NOTICE OF MOTION AND SUPPORTING DOCUMENTS

UPON:

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, ESQS.
ONE NEW YORK PLAZA
NEW YORK, NEW YORK 10004-1980
BANKRUPTCY ATTORNEYS FOR FAMILY GOLF CENTER, INC.

BRIAN MASUMOTO, ESQ.
UNITED STATES TRUSTEE
33 WHITEHALL STREET 21ST FLOOR
NEW YORK, NEW YORK 10004

SCOTT M. DORESON, ESQ.
LAW OFFICES OF PATRICK L. MacDONNELL
1325 FRANKLIN AVENUE SUITE 230
GARDEN CITY, NEW YORK 11530
ATT FOR DEFENDANT FAMILY GOLF CENTERS, INC.

enclosed in a post paid properly addressed wrapper, in an post-office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York.

SWORN TO BEFORE ME THIS
26TH DAY OF JUNE, 2000


NOTARY PUBLIC

PATRICIA MOWBRAY
Notary Public, State of New York
No 01MO4811371
Qualified in Suffolk County
Commission Expires March 30, 2002


LYNN STERN

STATE OF NEW YORK }

SS:

COUNTY OF SUFFOLK }

LYNN STERN, being duly sworn, deposes and says:

Your deponent is not a party to the within action, is over 18 years of age and resides at Centereach, New York

On SEPTEMBER 1, 2000, your deponent served the following :

NOTICE OF MOTION, AFFIRMATION IN SUPPORT AND EXHIBITS , PROPOSED ORDER
UPON

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
ONE BOWLING GREEN
NEW YORK, NEW YORK 10004
ATT: CHAMBERS HON. JUDGE STUART M. BERNSTEIN

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, ESQS.
ONE NEW YORK PLAZA
NEW YORK, NEW YORK 10004-1980
BANKRUPTCY ATTORNEYS FOR FAMILY GOLF CENTER, INC.

BERLACK, ISRAELS, LIEBERMAN, LLP
120 West 45th Street
New York, New York 10036
Att Edward S. Weisfelner, Esq.
Attorneys for Official Committee of Unsecured Creditors

Morgan, Lewis & Bockius
101 Park Avenue, 40th Floor
New York, New York 10178
Att: Richard S. Todder, Esq.

Brian Schoichi Masumoto, ESQ.
UNITED STATES TRUSTEE
33 WHITEHALL STREET 21ST FLOOR
NEW YORK, NEW YORK 10004

SCOTT M. DORESON, ESQ.
LAW OFFICES OF PATRICK L. MacDONNELL
1325 FRANKLIN AVENUE SUITE 230
GARDEN CITY, NEW YORK 11530
ATT FOR DEFENDANT FAMILY GOLF CENTERS, INC.

WILSON, MOSKOWKITZ, EDELMAN & DICKER, LLP
925 Westchester Avenue
White Plains, New York 10604-3527
Att for EQR-DEER RUN VISTAS, INC.

enclosed in a post paid properly addressed wrapper, in an post-office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York.

SWORN TO BEFORE ME THIS
1ST DAY OF SEPTEMBER


NOTARY PUBLIC

PATRICIA MOWBRAY
Notary Public, State of New York
No. 01MO4811371
Qualified in Suffolk County
Commission Expires March 30, 2002


LYNN STERN